

## **BEFORE THE DIVISION OF INSURANCE**

### **STATE OF COLORADO**

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#### **FINAL AGENCY ORDER O-06-073**

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### **IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF COMMERCE AND INDUSTRY INSURANCE COMPANY,**

#### **Respondent**

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**THIS MATTER** comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Commerce and Industry Insurance Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated July 1, 2005 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

#### **FINDINGS OF FACT**

1. At all relevant times, the Respondent was a corporation licensed by the Division to conduct all lines of property and casualty insurance, including workers' compensation insurance.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on or about July 1, 2005, the Division completed a market conduct examination of the Respondent's workers' compensation insurance business. The period of examination for workers' compensation insurance covered July 1, 2002 to June 30, 2003, and January 1, 2004 through December 31, 2004.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-

204(1), C.R.S.

5. The market conduct examiners prepared the Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

#### **CONCLUSIONS OF LAW AND ORDER**

8. Unless expressly modified in this final agency order (the "Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A concerns the following violation: Failure, in some cases, to maintain required records when writing workers' compensation policies containing Colorado exposures. The Respondent shall provide written procedures demonstrating that it has maintained the required records when writing workers' compensation policies containing Colorado exposures to ensure compliance with Colorado insurance laws. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue B concerns the following violation: Failure to require insureds to indicate on a form their awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files. The Respondent shall provide written procedures demonstrating that it shall require insureds to indicate on a form their awareness of the potential savings available when obtaining cost containment certification by the Colorado Workers' Compensation Cost Containment Board, and shall retain this form in the insureds' underwriting files to ensure compliance with Colorado insurance laws.
11. Issue C concerns the following violation: Failure to require insured business entities to indicate on a form awareness of the premium differential available when an insured selects a designated medical provider and to retain this form in the insureds' underwriting files. The Respondent shall provide written procedures

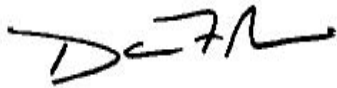
demonstrating that it shall require insured business entities to indicate their awareness of the premium differential available if they select a designated medical provider, and shall retain this form in the insured's underwriting file to ensure compliance with Colorado insurance law.

12. Issue D concerns the following violation: Failure, in some cases, to use experience modification factors promulgated by NCCI. The Respondent shall provide written procedures demonstrating that all workers' compensation policies with Colorado exposures contain the experience modification factors promulgated by NCCI to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
13. Issue E concerns the following violation: Failure, in some cases, to apply correct rating methodology when rating workers' compensation policies containing Colorado exposures. The Respondent shall provide written procedures demonstrating that all workers' compensation policies with Colorado exposures contain correct rating methodology to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
14. Issue F concerns the following violation: Failure, in some cases, to correctly report unit statistical card information to NCCI when writing workers' compensation policies containing Colorado exposures. The Respondent shall provide written evidence demonstrating that it has correctly reported unit statistical card information to NCCI to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
15. Pursuant to § 10-1-205(3)(d), C.R.S., the Respondent shall pay a civil penalty to the Division in the amount of six thousand and 00/100 dollars (\$6,000.00). This fine represents a combined fine for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin no. 1-98, issued on January 1, 1998.
16. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related order.
17. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the

market conduct section. All self-audits, if any, shall be performed in accordance with the Division's document, 'Guidelines for Self Audits Performed by Companies' presented at the market conduct examination exit meeting. Unless otherwise specified in this Order, all self-audit reports must be received within ninety (90) days of the Order, including a summary of the findings and all monetary payments to covered persons.

18. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions as provided for by law.
19. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

**WHEREFORE:** It is hereby ordered that the findings and conclusions contained in the final examination report dated July 1, 2005, are hereby adopted and filed and made an official record of this office and the above Order is hereby approved this 26th day of October, 2005.



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David F. Rivera  
Commissioner of Insurance

CERTIFICATE OF CERTIFIED MAILING

I hereby certify that on the 26th day of October, 2005, I caused to be deposited the **FINAL AGENCY ORDER No. O-06-073 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF COMMERCE AND INDUSTRY INSURANCE COMPANY**, in the United States Mail via certified mailing with the proper postage affixed and addressed to:

Mr. Louis P. Iglesias, President  
Commerce and Industry Insurance Company  
70 Pine Street  
New York, NY 10270

Jack Kendall, Esq.  
Assistant General Counsel  
Commerce and Industry Insurance Company  
70 Pine Street  
New York, NY 10270

A handwritten signature in black ink, reading "Dolores Arrington". The signature is fluid and cursive, with the first name "Dolores" and last name "Arrington" clearly distinguishable.

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Dolores Arrington, MA, AIRC, ACS  
Market Conduct Section